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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

MARQUISE JACKSON,

Defendant and Appellant.

B277387

Los Angeles County
Super. Ct. No. GA084095

APPEAL from a judgment of the Superior Court of
Los Angeles County, Dorothy L. Shubin, Judge. Affirmed.

Deborah L. Hawkins, under appointment by the Court
of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Steven D. Matthews and Ryan M. Smith,
Deputy Attorneys General, for Plaintiff and Respondent.

Marquise Jackson's 18-month-old daughter drowned in a bathtub while under his care. A jury convicted Jackson of first degree murder and assault on a child causing death. He appeals, and we affirm.

BACKGROUND

An information filed January 29, 2013 charged Jackson with murder (Penal Code § 187, subd. (a))¹ and assault on a child causing death (§ 273ab, subd. (a)) in the 2011 death of his daughter M. Jackson pleaded not guilty.

At trial, M.'s mother T.M. testified that M. was born November 25, 2009, and Jackson was M.'s father. T.M. had been in an off-and-on relationship with Jackson, who saw M. for the first time when M. was six weeks old. T.M. and M. lived with Jackson for about three months, and then T.M. and M. moved to an apartment in Pasadena. Jackson was unemployed and living with his aunt. In April 2011, at T.M.'s request, Jackson moved in to take care of M. while T.M. worked as a parking cashier. On May 13, 2011, T.M.'s cousin and godmother, L.P., also moved in.

On the afternoon of May 20, 2011, T.M. went to work, leaving M. with Jackson and L.P. T.M. and Jackson had argued earlier that week, and he told her he wanted to leave but had no money. T.M. gave him \$20.00 for train fare, but he changed his mind and stayed.

Jackson did not call T.M. at work that day, which was unusual. At around 9:00 p.m., her godmother called T.M., crying and saying M. was stiff, cold, and unresponsive. T.M. told her to call 911, and rushed home. When she pulled up, she saw an ambulance, fire trucks, coroner and police vehicles, and police officers. "When you see a scene like that, you already know what to expect. Your daughter is dead."

¹ All subsequent statutory references are to the Penal Code.

After the police told her M. was dead, T.M. reached Jackson on his brother's phone. "I told him that my baby was dead, and I think that he killed her." Jackson asked: "How that happen?" He was slurring his words, and said he was drunk. T.M. responded: "You only drunk because you're trying to drink your pain away basically. You can't do that, and I'm not retarded. I pull up and my daughter's dead and you're gone. . . . But you never once told me you were leaving.'" Jackson did not return to the apartment, call T.M., or attend M.'s funeral two weeks later.

The police found M. on the floor of the bedroom with fluid coming out of her nose and mouth. Outside, the fire captain pronounced her dead. A coroner's investigator on the scene testified the foam in her mouth was consistent with drowning. The medical examiner testified that the coroner's investigator's report, the autopsy report, and photographs showed M. died from asphyxia caused by drowning.

T.M.'s godmother L.P. testified she had been staying with T.M. for a week on the day M. drowned. L.P. sometimes cooked, and Jackson took care of M. Jackson told L.P. he didn't want a baby, it was a hardship for him, and he wasn't ready for a child. Jackson also doubted M. was his, and he didn't like the child support people coming after him.

After T.M. left for work that afternoon, Jackson made L.P. and M. something to eat. When M. woke up from a nap, Jackson said he was going to give her a bath. L.P., who was busy doing laundry and talking to the phone company, heard the water running, and Jackson closed the bathroom door.

Later, Jackson asked L.P. for directions to the apartment, and used her phone at least three times to call his aunt to pick him up. Jackson told L.P. that M. had gone to sleep. He closed the bedroom door and left, saying he'd be back.

When L.P. entered the bedroom to wake M., she found M. lying on her back wearing a diaper; M. had foam in her mouth, and she was cold and unresponsive. L.P. screamed, called T.M., and then called 911. The 911 operator told her to put M. on the floor and perform CPR, but it didn't work.

In August 2011, T.M. drove to see Jackson in Lancaster. They talked in her car, which was wired with a police recording device. When she brought up M., he said he didn't want to talk about it, and looked out of the car window with tears in his eyes.

Two detectives interviewed Jackson at his aunt's home in Lancaster shortly after M.'s death, before a cause of death was assigned. The first interview was not recorded, and no details were in evidence at trial. Three months later, on August 25, 2011, the detectives went back out to Lancaster to conduct a second interview with Jackson at his aunt's home. This interview was recorded, and the jury heard the recording and saw a transcript of the first 98 pages of a 130-page transcript. Jackson told the police that M. woke up, he put her in the tub, and she drowned. Jackson first said "[i]t was foul play," then said it was an accident, and then admitted he put her head underwater. "After it happened, I couldn't take it. I had to leave. I didn't want to stay there." Asked what made him do it, Jackson said: "It was just stuff building up, you know. I—I had a baby and nothing going right for me, like I can't provide for her. I couldn't do nothing I wanted to do period. [¶] So it was just like a burden." After M. drowned, he dried her off, put a new diaper on her, and put her back on the bed.

The jury found Jackson guilty of both counts. The trial court sentenced Jackson to 25 years to life on the murder count, stayed his sentence on the assault count under section 654, awarded custody credits, and imposed fines and fees. Jackson filed this timely appeal.

DISCUSSION

1. *The trial court properly denied the motion to suppress*

Jackson filed a pretrial motion to suppress his statements during his August 25, 2011 interview with the detectives at his aunt's house, under *Miranda v. State of Arizona* (1966) 384 U.S. 436 (*Miranda*) and the due process clause. The prosecution argued Jackson was not in custody. At the hearing, the trial court agreed. Although at some point the interview turned into an interrogation, the totality of the circumstances showed that Jackson was not in custody. Jackson was not yet under arrest.² The two detectives arrived at Jackson's residence at a reasonable time (9:00 a.m.) and had an appointment. Jackson invited the detectives to sit at a table. Another resident walked in and out during the interview; Jackson's freedom of movement was not blocked. The detectives were in plainclothes and their weapons were holstered. The interview was long (90 minutes), one of the detectives raised his voice, and after the detectives asked Jackson to tell them what happened, some of the questions were accusatory. "But given the totality of the circumstances, the court finds that Mr. Jackson was not in custody or the functional equivalent of arrest at the time that the statements were made in the record." The statements also were voluntary. Although one detective told Jackson to "sit back down," the context showed that Jackson was not trying to leave, but was getting up to go to the station for a lie detector test. The trial court denied the motion.

Miranda's rule that prosecutors may not use a defendant's statements against him at trial unless the defendant was advised of his right to remain silent and his right to an attorney (among

² The continued conversation recorded in the patrol car after Jackson's arrest was not introduced at trial.

other rights) “only applies when the suspect-defendant was the subject of ‘custodial interrogation.’ ” (*People v. Orozco* (2019) 32 Cal.App.5th 802, 811.) A defendant who is interrogated while in custody is subject to “ ‘inherently compelling pressures which work to undermine the individual’s will to resist and to compel him to speak where he would not otherwise do so.’ ” (*Id.* at pp. 811-812.) Jackson was not under formal arrest during the admitted portion of his recorded interview. To determine whether Jackson was effectively in custody, we ask whether, considering the objective facts and the surrounding circumstances of the August 25 interview, a reasonable person would have felt he or she was free to end the interview and leave. (*Howes v. Fields* (2012) 565 U.S. 499, 509.)

Relevant factors include whether Jackson voluntarily agreed to the interview; whether the interview was expressly to question Jackson as a suspect; whether the detectives told him he was under arrest, or free to end the interview, and whether Jackson’s behavior shows he was aware of that freedom; whether his movement was restricted during the interview; how long the interview lasted, and how many detectives participated; whether they dominated and controlled the interview; whether “they manifested a belief that the person was culpable and they had evidence to prove it”; whether they were aggressive, confrontational, and/or accusatory; whether they used interrogation techniques to pressure Jackson; and whether Jackson was arrested at the end of the interview. (*People v. Torres* (2018) 25 Cal.App.5th 162, 172-173.) “We independently evaluate whether the defendant was in custody by considering the totality of the circumstances surrounding the incident. [Citation.] No single factor is dispositive. [Citation.] ‘Rather, we look at the interplay and combined effect of all the circumstances to determine whether on balance they created a coercive

atmosphere such that a reasonable person would have experienced a restraint tantamount to an arrest.’ [Citation.] Where, as here, an interview is recorded, the facts surrounding the admission are undisputed and subject to our independent review.” (*Id.* at p. 173.)

The detectives arrived at 8:50 a.m. and had an appointment with Jackson, who let them into the house and agreed to talk. The detectives told him they were reinterviewing everyone, including T.M. and L.P. The detectives did not tell him he was under arrest during the portion of the interview in evidence, nor did they expressly say he was free to end the interview. Early in the interview, while Jackson was talking about making food for M. the day she drowned, a woman walked by and a detective asked if he was in the way. Twice more the detectives asked about others present in the home. Jackson’s movement was not restricted. While the interview lasted an hour and a half, the admitted portion was the first two-thirds of the transcript.

At first the detectives were conversational and matter-of-fact. Jackson told them his version of events (he left when his aunt came to pick him up, while M. was asleep in the bedroom). A detective asked him if he knew how M. had died, and Jackson said no. The detective said M. was suffocated; Jackson asked how, and the detective answered: “You tell me.” Jackson said: “I can’t tell you.” The detectives then suggested Jackson’s phone calls to his aunt were suspicious; he responded that he left because he didn’t get along with T.M. The detective said, “[T]his is the time you got to tell us because, Marquise, something bad happened to your daughter . . . and your daughter passed away. Now, there could be many reasons for that, but with you staying away from those questions, you know, it doesn’t look good.” Jackson continued to insist he did not know what happened.

The detective told him the time of death was while Jackson was still there: “The baby was suffocated. Now how did it happen?” Jackson said he didn’t know, and the detective responded: “Okay. So you killed your baby?” Jackson answered no, and the detective said: “Well, you either killed her or there was an accident.” The other detective added: “Babies don’t just suffocate themselves.”

Jackson said T.M. had told him the case was closed, and the detective said: “Well, I guess it isn’t, is it?” The detective told Jackson he had listened to the recording of his conversation with T.M. in the car, when Jackson admitted he hadn’t told her he was going to leave. Jackson denied saying that, and asked the detective to play the recording. The detective said, “Come on down to the station.” Jackson said okay, and the detective added: “You want to do a lie detector too?” Jackson said, “I guess so.” The detective then asked where Jackson was going, and he said, “I’m gonna put my stuff on.” The detective told Jackson: “Sit back down. What happened that day?” Jackson continued to say he didn’t know.

The tone of the interview turned more accusatory. The detectives pointed out that Jackson had not attended M.’s birth or her funeral and did not call T.M. after M.’s death, and asked if he even missed M. The detective said he was interviewing Jackson because M. died of suffocation, and asked Jackson what happened. Jackson said he didn’t know, and the detective responded: “You went blank? You can’t remember?” “[Y]ou’re covering it up like you murdered her, man. . . . Did you mean to kill her?” Jackson denied it. The other detective suggested Jackson loved M., and needed to tell them what happened and move on. If Jackson told a jury what he was telling the detectives “and you’re not giving any reasoning for it, Marquise, you don’t

want to be labeled what's gonna be labeled and you don't want to go to prison for that."

Saying, "you got to tell us now 'cause this is when you got to tell your story of what happened," the detective asked whether Jackson accidentally laid M. on her stomach, found M. on the floor after she rolled off the bed, or noticed M. was not breathing: "What got you so scared that you had to leave?" Jackson continued to insist: "I didn't do it." The detectives told Jackson the coroner's report gave the time of death as 6:00 p.m., before Jackson left. "Tell the truth. What happened to your daughter, man?"

The detectives accused Jackson of lying in his first interview when he said he'd told T.M. and L.P. he was leaving. Any jury member would want to know why he left when he did. They urged Jackson to let M. rest in peace: "Just tell us, open up. Let her rest."

Jackson said: "It just got out of hand. . . . It got carried away. . . . It was an accident." M. drowned in the bathtub, and "[i]t was foul play." Jackson put M. in the tub. After she drowned, he took her out and put her back on the bed. The detective asked: "Did you put her head under the water and then did you dry her off then or what?" Jackson answered: "Yeah, I did all that," and he also changed her diaper. "After it happened, I couldn't take it. I had to leave. I didn't want to stay there." Things had built up, nothing was going right for him, he couldn't provide for the baby or do anything he wanted to do, "[s]o it was just like a burden." He regretted it now, and he missed M. Shortly thereafter, the detectives told Jackson he had to come with them, and told him to get his things.

We do not think Jackson's pre-arrest interview presented "circumstances that are thought generally to present a serious danger of coercion." (*Howes v. Fields*, *supra*, 565 U.S. at pp. 508-

509.) The police arrived at Jackson's residence around 9:00 in the morning with an appointment. They sat with Jackson at a table with other relatives walking by. The detectives told Jackson they knew the cause (suffocation) and time of M.'s death, but did not tell him they had proof he was guilty. They used interrogation techniques, alternating suspicion and sympathy, but were not overly aggressive. Considering all the circumstances, we conclude the detectives did not create such a coercive atmosphere that a reasonable person would have experienced a restraint equivalent to arrest.

Our independent review also convinces us that Jackson's statement was voluntary. (*People v. Lewis* (2001) 26 Cal.4th 334, 383.) We consider the totality of the circumstances, including any police coercion, the length, place, and continuity of the interrogation, and the defendant's maturity, education, and health. (*People v. Duff* (2014) 58 Cal.4th 527, 555-556.) The central question is whether Jackson's will was overborne at the time he confessed. (*People v. Delgado* (2018) 27 Cal.App.5th 1092, 1107.) A confession is involuntary " 'when it has been extracted by any sort of threats or violence, or obtained by any direct or implied promises, however slight, or by the exertion of any improper influence.' " (*Ibid.*) Coercive activity by the police is a necessary predicate to a finding of involuntariness. (*Ibid.*) Just as the detectives did not create a coercive atmosphere constituting a restraint equivalent to arrest, Jackson's interrogation, which lacked threats, violence, promises, or improper influence, did not amount to coercion sufficient to overcome his will. (*People v. Spencer* (2018) 5 Cal.5th 642, 673-674.) Further, the record does not show (and Jackson does not argue) that he was immature, uneducated, or physically or mentally ill. (*People v. Ramos* (2004) 121 Cal.App.4th 1194, 1202-1203.)

2. *The trial court properly responded to the jury's question about premeditation*

At the beginning of the second day of deliberations, the jury submitted a question to the trial court, requesting

“[c]larification on the ‘deliberate’ and ‘premeditated’ consideration necessary for the first-degree decision: does the consideration/premeditation need to happen prior to *beginning* the act of killing, or can it take place up until the end of the act? i.e., [d]o we take into account any consideration/weighing of consequences that takes place *during* the act of killing?”

The trial court asked defense counsel how he wanted the court to respond to the question. Counsel answered: “That the court direct the jury to consider CALCRIM 521 again.” The prosecutor agreed. The court told the jury to consider CALCRIM No. 521 along with all the instructions. Shortly thereafter, the jury reached its verdicts, including one of first degree murder.

CALCRIM No. 521, as given by the trial court, states:

“The defendant is guilty of first degree murder if the People have proved that he acted willfully, deliberately, and with premeditation. The defendant acted willfully if he intended to kill. The defendant acted deliberately if he carefully weighed the considerations for and against his choice and, knowing the consequences, decided to kill. The defendant acted with premeditation if he decided to kill before *completing* the act that caused death. [¶] The length of time the person spends considering whether to kill does not alone

determine whether the killing is deliberate and premeditated. The amount of time required for deliberation and premeditation may vary from person to person and according to the circumstances. A decision to kill made rashly, impulsively, or without careful consideration is not deliberate and premeditated. On the other hand, a cold, calculated decision to kill can be reached quickly. The test is the extent of the reflection, not the length of time.”

(Italics added.)

On appeal, Jackson argues that referring the jury back to the instruction was error, because premeditation must “predate” the act of killing and must “ ‘happen before the beginning of the act.’ ” “He has waived this argument by specifically agreeing below to the court’s handling of the jury’s question.” (*People v. Harris* (2008) 43 Cal.4th 1269, 1317.)

Even if he had not forfeited this argument, Jackson is wrong. Jackson does not argue that the first degree murder verdict is not supported by substantial evidence of premeditation. Instead, he argues that CALCRIM No. 521 misstates the law by instructing that premeditation must occur “before *completing* the act that caused death,” because the law requires that premeditation must occur before *beginning* the act that caused death. The instruction is a correct statement of the law. A defendant could make a premeditated decision to kill during the course of an attack. In *People v. Ainsworth* (1988) 45 Cal.3d 984, the California Supreme Court upheld a jury’s finding of premeditated and deliberate murder “based on the theory that defendant knowingly and intentionally permitted the victim to bleed to death as he kept her captive during the lengthy car ride after the shooting.” (*Id.* at p. 1023.) The California Supreme

Court reached a similar conclusion in *People v. Raley* (1992) 2 Cal.4th 870, finding sufficient evidence to support the jury's finding of premeditation and deliberation:

“Even if we were to agree that it could only be concluded that the many stab wounds defendant inflicted on each woman were part of an unreflective explosion of violence, his calculated decision to let them bleed for the next 18 hours, to refuse medical attention, to beat them about the head and to dump them on a winter night into an isolated ravine supports the conclusion that he premeditated the death of [the murder victims].”

(*Id.* at p. 888.) These cases provide support for the “before completing” language of CALCRIM No. 521.

We also consider the instructions as a whole, assuming the jury is capable of understanding and correlating all the instructions given. (*People v. Hernandez* (2010) 183 Cal.App.4th 1327, 1332.) The immediately-preceding instruction, CALCRIM No. 520, explained that murder requires malice aforethought and is second degree unless proven to be first degree. The jury knew from the challenged instruction on first degree murder that Jackson acted willfully if he intended to kill M., and that in addition to intending to kill, Jackson must have premeditated and deliberated, carefully weighing the considerations and the consequences at some time before completing the act causing death and then deciding to kill. The instruction also informed the jury that while the length of time is not dispositive, a rash or impulsive decision is not deliberate and premeditated. CALCRIM No. 521 clarified that premeditation was not synonymous with intent, and that premeditation could occur

at any time before Jackson completed the act of drowning that killed M.

DISPOSITION

The judgment is affirmed.

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EGERTON, J.

We concur:

Edmon, P. J.

Murillo, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.